

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BIENVENIDO JEREZ,

Petitioner,

v.

MATTHEW J. DIVRIS,

Superintendent.

**CIVIL ACTION NO.
24-40101-DHH**

**ORDER TO FILE PETITION FOR A WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2254**

August 22, 2024

Hennessy, M.J.

Pro se petitioner Bienvenido Jerez, who is confined at NCCI Gardner, brings this action for habeas relief in which he challenges a sentence imposed in 2023 in Essex Superior Court on a charge for which he was convicted in 2013. (Dkt. No. 1). Jerez characterizes his pleading as a petition for a writ of habeas corpus under the general habeas statute, 28 U.S.C. § 2241, stating that it “is the proper vehicle for challenging pretrial detention, or attacking the execution of a sentence.” *Id.* at 4.

Because Jerez is challenging the judgment of a state court, he must seek habeas relief under 28 U.S.C. § 2254 (“§ 2254”), which provides that a federal court may “entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court” if the person is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

A party seeking habeas relief under § 2254 must comply with the Rules Governing Section 2254 Cases in the United States District Court. Under Rule 2, a § 2254 petition must, *inter alia* “substantially follow” a form appended to the Rules Governing Section 2254 Cases. Rule 2(d).¹ This form, titled “Petition for Relief from a Conviction or Sentence By a Person in State Custody,” is published by the Administrative Office of the United States Court as form “AO 241.” This form requires the petitioner to provide information that Jerez has not included in his § 2241 petition, including whether he has challenged the sentence in the state court on direct appeal or in a state post-conviction proceeding.

Accordingly, the Court orders Jerez to file a § 2254 habeas petition using form “AO 241” within thirty-five (35) days of the date of this order. Failure to do so may result in dismissal of this action by a District Judge. The Clerk shall provide Jerez the necessary form.

So Ordered.

/s/ David H. Hennessy
David H. Hennessy
United States Magistrate Judge

¹The petition also complies with Rule 2 if it “substantially follow[s]” a form prescribed by a district court’s local rules. Rule 2(d). This Court’s Local Rules does not prescribe a form for a § 2254 petition.